IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1091 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GANGADHAR YASHVANTRAO RAMEKAR - Petitioner

Versus

NARI KODAMAL GODWANI &3 - Respondent(s)

Appearance :

MR. MANISH UPADHYAYA for MR PRANAV G DESAI for Petitioner No: 1.
NOTICE SERVED for Respondent No(s).: 1,2.
MR. K.C. SHAH, LD. APP for Respondent No: 3.
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CORAM : HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date : 29/06/2005

ORAL JUDGMENT

Heard Mr. Manish Upadhyay for Mr. Pranav G. Desai, learned counsel for the appellant and Mr. K.C. Shah, learned APP on behalf of the State – Respondent No.3. Though served no one appears on behalf of Respondents No. 1 &2.

1. This matter pertains to the year 1992 and the criminal case was that of year 1985. The point involved in the mater is limited and hence this Court is of the view that, though the original accused – Respondents no. 1 &2 herein were duly served they have chosen not to appear before the Court and put up their defence. In view of this, this Court is constrained to proceed further in deciding the matter.
2. The appellant Vadodara Municipal Corporation through Shri. Gangadhar Y. Ramekar, Food Inspector, has preferred this Criminal Appeal under section 378 of the Code of Criminal Procedure, challenging the order dated 14-2-1991 passed by learned JMFC, Vadodara, in Criminal Case No. 5808 of 1985 recording acquittal of original accuse No.1 &2 (Respondents no.1 &2 herein) of the charges under section 2 (1) and 7 of Prevention of Adulteration Act, 1954 (hereinafter referred to as the 'Act') This Court has granted leave and admitted the appeal (Coram: B.J. Shethna, J) vide order dated 18-11-1992.
3. The original complainant, who was serving as Food Inspector in the appellant Vadodara Municipal Corporation during his duty on 28-8-1985 at around 11.00 0' clock visited the shop of respondent no.1 in presence of panch. At that time respondent no.2 was present in the shop. The respondents no.1 and 2 are partners and own a shop bearing Shop No. C/13 in Sardar Estate, Ajwa Road, in the name &style of Harish Product wherein they produce biscuits. The packets of biscuits were displayed for selling and out of these packets

6 packets of 300 gram each were purchased by the complainant from respondent no.2 on payment of Rs.24=00 in presence of panch. Necessary cash memo and receipt was issued. The 6 packets were divided into 3 equal parts and they were properly wrapped, labeled and packed in accordance with the provisions of Food Adulteration Rules, 1955 (hereinafter referred to as the 'Rules'). The necessary Local Health Authority code number, serial number etc. were affixed on the samples. The necessary notice for sending the same for public analysis was also issued to the seller. Thereafter, one part of the sample was sent to the Public Analyst. The report of the Public Analyst indicated that the food article i.e. Biscuits were not in conformity with the prescribed standards under the Rules and therefore, the complainant submitted all the papers along with the report of the Public Analyst to the Local Health Authority for obtaining necessary sanction for lodging prosecution against respondents no.1 &2. On receipt of necessary sanction from the Local Health Authority the complaint was lodged on 11-9-1985. The case was proceeded as a warrant triable case. An application at mark-4 was submitted on behalf of accused no.1 requesting the court to send one part of the sample to the Central Food Laboratories, Pune, which came to be accepted and allowed by the trial court on 3-10-1985. The report of the Central Food Laboratory, Pune, indicating that the sample was not in conformity with the rules laid down, is at exhibit-10. The complainant's deposition has been recorded at exhibit-22. The charge sheet was issued and plea was recorded at exhibit- 53 &54. As the accused did not accept the charge the case proceeded further. It is important to note that the prosecution has chosen not to examine panch witness the peon and supervisor who had accompanied the complainant in collecting the samples.

4. In his deposition the complainant has narrated in detail the fact of visiting the place of the accused where the biscuits in question were produced and sold to him. The entire deposition show that there was due compliance with the provisions of the Act and the Rules in collecting the sample, issuing the notice for collecting samples, for sending it for analysis, receipts for making payment for the price of the samples purchased, the sealing, wrapping and labeling procedure etc. The notice of sending sample for

public analysis is produced at exhibit-29. Receipt of payment for samples purchased and duly signed by accused no.1 &2 is at exhibit-31,panchnama is at exhibit-32. The factum regarding sending the same to the Public Analyst and obtaining acknowledgment form him are produced on record by way of extract of page no. 24 of the register popularly called 'post book' is produced at exhibit-35 which indicates that memorandum was separately sent which was also received by the Public Analyst. The Public Annalist received 2 remaining samples and the signature of the concerned Public Health Authority is identified by the complainant and that is produced at exhibit-36. The forwarding letter issued by Public Analyst accompanying his report are produced at exhibit-37 &38 respectively, and the consent letter is at exhibit-39. The report prepared by the complainant for obtaining consent is exhibit-40.

5. In the cross examination mainly suggestions were made in respect of Food Inspector's qualification and training. The complainant has admitted that he has not obtained 90 days training. He has further stated in his cross examination that he has not joined Harish Product as accused though it is a partnership firm. He has admitted that the letter for obtaining consent did not bear any date. He has stated in his cross examination that it was a routine to send letters to Local Health Authority for obtaining consent, and accordingly letters were submitted to the authority and the consent was obtained which is at exhibit-39. He denied the suggestion that there was any breach in obtaining consent order or the consent was invalid. He denied the suggestion that the consent was accorded without application of mind. He has stated in his cross examination that the No. 10 bearing on the sample was that of code number given to Food Inspector. He stated that the code No. G-6 of Local Health Authority was not mentioned in the papers which are submitted to the Local Health Authority. He admits that he has not signed it. He denied the contention that the case was falsely lodged against the accused. He admitted that the Public Analyst Report at exhibit-38 does not show as to when was the sample examined. He admits that the report was in a printed form. He denies that the report does not show that the product was injurious to health.

6. No one else was examined except the complainant by the prosecution. The accused have chosen not to examine themselves and they have not led any evidence except filing written submissions.
7. Learned Magistrate has framed the following issues:-

The learned Magistrate has answered the Issue No.1 in affirmative, No. (2) in negative, and No. (3) as per his order.

1. The learned Magistrate has recorded that the sample biscuits sent for public analysis were not in conformity with the standards laid down in the Act and the Rules, and therefore, they were adulterated.
2. The learned Magistrate has held that there was breach of Rule 15 and therefore the benefit thereof should be given to the accused. Learned Magistrate has recorded this finding on the basis that the labels as prescribed under section 15 of the Rules were not directly affixed on the packets of the biscuits and the biscuits packets were wrapped in brown paper and the labels were placed on the brown paper, thereby breach of Rule 15.
3. Learned Magistrate has further held that the consent order is an order in cyclostyled form and it indicates that it was issued without application of mind in as much as the consent order does not indicate the code number of Local Health Authority nor does it indicate the date of the report made to the authority by the complainant and therefore finding of non application of mind is recorded. He relies upon the judgment of this Court in case of RAMANBHAI SHIVABHAI PRAJAPATI Vs. STATE OF GUJARAT, reported in 1990 Cr.L.R.(Guj) pg. 496, wherein it has been observed that, as the Supreme Court has held in case of State of Bombay (now Gujarat) Vs. Parshottam Kanaiyalal, AIR 1961 S.C. pg. 1 that before granting consent, the authority should apply its mind to the case. Learned Magistrate has also referred to the Apex Court ruling in case of A.K. ROY &ANR. Vs. STATE OF PUNJAB &ORS, reported in AIR 1986 S.C. pg. 2160 and in view of this, it is held that sanction at exhibit-39 is not legal.
4. Learned Magistrate has held that the slip at exhibit-42 bears code number G C No.6 which is code of Local Health

Authority and on the sample serial No. 10/2 is shown which is the code number of complainant and therefore a doubt is created about appropriate sealing and affixing serial number by the complainant.

5. Learned Magistrate has negatived the contention of the defence that as the packing, sealing , labellings etc. was done by the peon, it was not proper and in the result he ought to acquit the accused no. 1 and 2 of the charges under section 7 punishable under section 16 of the Act.

6. This Court has perused the entire record. Heard learned counsel Shri. Upadhyay for Shri. P.G. Desi for the appellant and Shri. K.C. Shah, learned APP for the Sate who supports the case of the appellant. This Court has minutely perused the entire record, including evidence and depositions on the record. Respondents No. 1 and 2 have been duly served. None appeared for them.

7. Learned Magistrate has clearly recorded a finding that sample of food article was proved to be adulterate and therefore, so far as the adulteration aspect is concerned the prosecution case is held to be proved beyond reasonable doubt as it was not in conformity with the standards laid down in the Act and the Rules.

8. The acquittal is manly recorded on the basis of alleged invalid consent at exhibit-39 and for the so called breach of Rule 15 &16 of the Rules. The aspect of consent has been conclusively dealt with by this Court and the Apex Court in many rulings. This Court in case of STATE OF GUJARAT Vs. PATIRA PACKAGING (FIRM) &ORS., reported in 1999 (2) G.L.H. 761 has observed as under:

“Para-8: Mr. Anandjiwala submitted that there is nothing to indicate in the consent that the same is accorded in the interest of public and the competent authority applied its mind while granting sanction. Before according the consent, the authority must have before it necessary report and material. According a consent under Section 20(1) of the Act is an administrative act and not a quasi-judicial. Therefore, a consent need not contain detailed reasons in support of according the consent. What is required is narration of basic facts that constitutes the offence. It should be apparent on the fact of it. Grant of valid sanction to prosecute for an offence under the Act is a condition precedent. The Apex Court has pointed out in

several judgments that it is desirable that the facts should be referred to in the sanction. The documents were referred by the competent authority while according the consent and that consent reveals existence of prima facie case and evidence against the accused.

Para-9: It can be safely inferred that there is application of mind when consent was accorded by the competent authority. Section 114(e) of the Evidence Act raises a presumption that the official act is performed regularly. Burden is on the accused to establish contrary to rebut the presumption.

Para-10: In the case of Suresh H. Rajput V. Bhartiben Pravinbhai Soni reported in (1996) 7 SCC 199, the Apex Court considered about application of mind while granting sanction. In paragraph-12 of the judgment, the Apex Court held as under:

“It is seen that the analysis report which was placed before the Local (Health) Authority and the other pertinent material in connection therewith have been placed before the sanctioning authority. After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal, etc. All these are not matters for the sanctioning authority to weigh and to consider the pros and cons of the case before granting sanction to lay prosecution against the respondents. “

In case of B.L. MAHERIA, FOOD INSPECTOR, AMC Vs. VALLABHBHAI GODABHAI AND OTHERS, reported in 2003(3) G.L.H. 157, it is observed as under:

“Para-6: The reason recorded by the Ld. Magistrate in the judgment, more particularly, on the point No.(i) show that the Ld. Magistrate has mainly relied on the judgment of the Apex Court in case of A.K. Roy (supra) and of the Bombay High Court in the matter of Gahininath Bhimrao Patekar v. State of Maharashtra, reported in 1987(1) Prevention of Food Adulteration Cases, page 95. There is no dispute on the point that while passing the order for granting sanction the Dy. Municipal Commissioner who was the person authorised for such purpose has used the words “Scrutinise &Sanction”. It is not the case of the accused that the Dy. Municipal

Commissioner had no authority to grant sanction nor such contention was raised before the Ld. Magistrate. It was only contended that no reasons were recorded and merely because the words used as “Scrutinise &Sanction “ can not be said to be sufficient for maintaining the legality and validity of the sanction.

7. In my view, as such, no detailed discussion is required because in view of the judgment of this Court, dated 11/12-7-1991 in Cri. Appeal No. 240/90 and other allied matters in case of H.D. Sevak (supra) since the issue is covered. While considering the judgment of Apex Court in the case of A.K. Roy (supra) the Division Bench in its para 9 has observed as under:

“The case is required to be dealt with in A.K. Roy's matter was further delegation of power to launch the prosecution pursuant to the Prevention of Food Adulteration Punjab Rules, 1958 and more particularly its Rule 3. “

Further at para 10 the Division Bench has observed as under:

“10. However, in our opinion, this being the controversy addressed by the Supreme Court, the observations quoted herein above as appearing in para 11 with regard to the written consent and more particularly “record his reasons for the launching of such prosecution” do not form part of the ratio of the judgment. It will be relevant to recapitulate that the contention that the order of written consent is required to be reasoned one was not raised before this court.”

Further, at para 24 the Division Bench has observed as under:

“24. In our opinion, while dealing with A.K. Roy's case in the earlier part of this judgment we have at length pointed out as to why the question of consent was not there before the Supreme Court. We reiterate that the question as could be seen on reading the judgment was that of sub delegation or redelegation by a delegated authority. Had it been the finding of the Supreme Court that the delegation was correct, obviously there was no need for consent for launching the prosecution. In either way, therefore, the aspect of consent was not at all in consideration, and therefore, in keeping with the aforesaid judgments we come to the conclusion that A.K. Roy's case is not a precedent for the purpose of and the ratio of that judgment, is not in

connection with the contents of “consent” required to be given by the concerned authorities under Section 20(1) of the said Act. We have further stated that nowhere from the judgment, reading it carefully throughout do we gather that the parties before the Supreme Court had addressed the court on the point of consent and that was treated as a matter in controversy requiring answer from the Supreme Court. “

At para 48 in case of H.D. Sevak (supra) the Division Bench has observed as under:

“The Act of granting of consent by the concerned authority will be an administrative act and not an act of quasi judicial proceedings... If there are administrative orders, no reasons are required to be given unless law requires it. It is nobody's case that this is the statutory requirement so far as the consent under Section 20(1) of the said Act is concerned. The court is therefore called upon to read into by interpretation. It being an administrative act, in our opinion, the said exercise of reading into the statute and the requirement of recording reasons in writing will fail. “

1. Thus, in view of this, this Court comes to the conclusion that the finding with regard to infirmity in the consent deserves to be quashed and set aside. This brings this Court to examine the next point of infirmity in compliance with Rule 15. The perusal of the record shows that the Rule 15 was duly complied with. The discussion with respect to labeling and putting serial number and code number of Local Health Authority is also complied with. This Court has perused the document at exhibit-42 which clearly show that the Local Health Authority Code No. G-6 is clearly written on the wrapper which contained the sample in question. It is, therefore, clear compliance with Rule 15 and the finding in that behalf deserves to be reversed and negatived. Shri. Upadhyaya has submitted that the Division Bench of this Court in case of M.B. Risaldar Vs. Deviram Chhitamal &Ors, reported in 25(1) G.L.R. At page 228 observed that as per Rule 16(c) code number and serial number should be mentioned by local authority. There is no breach of rule 16 (c) by such non-mention. No prejudice is caused by the alleged non-compliance of rule 16(c). This observation also helps the case of the prosecution.

1. It is important to note that learned Magistrate has not addressed himself on the question of conviction &sentence.

As the accused are required to be heard on the aspect of conviction &sentence, the matter is required to be remanded back to the trial court for recording appropriate order after affording full opportunity to the accused on this question. Looking to the passage of time that has gone-by, it is directed that the trial court shall expeditiously dispose of the matter within a period of four months from the date of receipt of writ of this Court.

2. The Registry is directed to forthwith send R &P to the trial court.

[S.R. BRAHMBHATT, J]

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